

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

ClipperData LLC

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File No.: EB-SED-16-00021833

Acct. No.: 201632100009

FRN: 0024475212

**ORDER**

**Adopted: August 29, 2016****Released: August 29, 2016**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether ClipperData LLC (ClipperData), failed to obtain FCC authorization prior to operating Radio Frequency Identification (RFID) readers near railways to monitor rail traffic in real time. The regulations involved ensure that devices that emit radio frequency radiation comply with the Commission's technical requirements and do not interfere with authorized communications.

2. To settle this matter, ClipperData admits that it operated the RFID readers without an authorization, and will pay a \$195,000 civil penalty. In assessing the civil penalty, the Bureau has taken into consideration the fact that ClipperData will relinquish its single existing Commission license, and should ClipperData seek a new license it would be obligated to implement a compliance plan for future licensed operations.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding ClipperData's compliance with Section 301 of the Communications Act of 1934,<sup>1</sup> as amended, and Section 1.903(a) of the Commission's rules.<sup>2</sup>

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of ClipperData's basic qualifications to hold or obtain any Commission license or authorization.<sup>3</sup>

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act<sup>4</sup> and the authority delegated by Sections 0.111 and 0.311 of the Commission's rules,<sup>5</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Sterling Lapinski, Chief Executive Officer, ClipperData LLC, 1115 Broadway, New York, NY, 10010, and to counsel for ClipperData LLC,

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 CFR § 1.903(a).

<sup>3</sup> See 47 CFR § 1.93(b).

<sup>4</sup> 47 U.S.C. § 154(i).

<sup>5</sup> 47 CFR §§ 0.111, 0.311.

Jonathan V. Cohen, Wilkinson, Barker, Knauer, LLP, 1800 M St., NW, Suite 800N, Washington, DC, 20036.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Chief  
Enforcement Bureau

**Before the  
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**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and ClipperData LLC (ClipperData), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether ClipperData violated Section 301 of the Communications Act of 1934, as amended<sup>1</sup> and Section 1.903(a) of the Commission's rules,<sup>2</sup> in connection with its operation of Radio Frequency Identification readers without authorization.

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.<sup>3</sup>
  - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (d) "ClipperData" means ClipperData LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
  - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which ClipperData is subject by virtue of its business activities, including but not limited to the Licensing Rules.
  - (g) "Contingent Compliance Plan" means the compliance obligations described in this Consent Decree at paragraphs 12 through 14 herein.
  - (h) "Covered Employees" means all employees and agents of ClipperData who perform, or supervise, oversee, or manage the performance of, duties that relate to ClipperData's responsibilities under the Communications Laws, including the Licensing Rules.
  - (i) "Effective Date" means the date by which both the Bureau and ClipperData have signed the Consent Decree.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 CFR § 1.903(a).

<sup>3</sup> 47 U.S.C. § 151 *et seq.*

- (j) “Grant Date” means the date that ClipperData first obtains any further License from the Commission after relinquishing its License for station WQWH244, but only if such date occurs within thirty-six (36) months of the Effective Date.
- (k) “Investigation” means the investigation commenced by the Bureau in EB-SED-16-00020925 regarding whether ClipperData violated the Licensing Rules.
- (l) “License” shall have the same meaning defined in Section 153(49) of the Communications Act, 47 U.S.C. 153(49).
- (m) “Licensing Rules” means Section 301 of the Communications Act of 1934, as amended, and Sections 1.903(a) of the Commission's rules and other provisions of the Act, the Rules, and Commission orders that prohibit the use or operation of a wireless radio station in a manner inconsistent with its licensed parameters.
- (n) “LOI” means the Letter of Inquiry issued by the Bureau to ClipperData on April 27, 2016 in connection with the Investigation.
- (o) “Operating Procedures” means the standard internal operating procedures and compliance policies established by ClipperData to implement the Contingent Compliance Plan.
- (p) “Parties” means ClipperData and the Bureau, each of which is a “Party.”
- (q) “RFID readers” means Radio Frequency Identification readers subject to Subpart M of Part 90 of the Rules.<sup>4</sup>
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

3. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any radio transmitting equipment within the United States, except under and in accordance with the Act and with a Commission-granted authorization.<sup>5</sup>

4. ClipperData is a small energy data company that collects and aggregates real-time data regarding the supply and movement of commodities in the energy market and sells data and analysis to investors, oil companies, and interested parties. In order to test RFID as a possible technology to gather data, ClipperData operated a constellation of RFID readers near railways to monitor rail traffic in real time. While ClipperData obtained a License to operate one of its RFID readers, station WQWH244, ClipperData did not obtain Licenses for the remainder of its RFID reader system.<sup>6</sup>

5. In response to a complaint alleging that ClipperData was operating RFID readers without authorization, the Bureau issued an LOI to ClipperData on April 27, 2016.<sup>7</sup> ClipperData responded to the LOI on May 27, 2016, stating that it did not fully understand the Licensing Rules, resulting in the operation of 39 of its RFID readers without authorization.<sup>8</sup> The Bureau and ClipperData subsequently entered into settlement negotiations to resolve this matter.

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<sup>4</sup> 47 CFR §§ 90.350 – 90.383.

<sup>5</sup> 47 U.S.C. § 301; 47 CFR § 1.903(a).

<sup>6</sup> A listing of ClipperData’s radio Licenses issued by the Commission can be found at the Commission’s Universal Licensing Service database at <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/searchAppl.jsp>.

<sup>7</sup> Letter from Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Sterling Lapinski, Chief Executive Officer, ClipperData (Apr. 27, 2016) (on file in EB-SED-16-00021833).

<sup>8</sup> Letter from Jonathan V. Cohen, Counsel for ClipperData, to William Reed, Spectrum Enforcement Division, FCC Enforcement Bureau, at 1 (May 27, 2016) (on file in EB-SED-16-00021833), at Response to Inquiry 8.

### III. TERMS OF AGREEMENT

6. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

7. **Jurisdiction.** ClipperData agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, ClipperData agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against ClipperData concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of ClipperData's basic qualifications to be a Commission licensee or hold Commission Licenses or authorizations.<sup>9</sup>

10. **Admission of Liability.** ClipperData admits for the purpose of this Consent Decree and for Commission civil enforcement thereof, and in express reliance on the provisions of paragraph 9 herein, that its operation of RFID readers without authorization violated the Licensing Rules.

11. **Relinquishment of License.** In consideration for the termination of the Investigation, and in express reliance on the provisions of paragraph 9 herein, ClipperData agrees to relinquish its License for station WQWH244. ClipperData has submitted an online request via the Commission's Universal Licensing System to cancel the License for station WQWH244. ClipperData agrees if it is granted a further Commission License before the date set forth in paragraph 16, it will accept the compliance obligations set forth in paragraphs 12 through 14 herein.

12. **Compliance Officer.** Within thirty (30) calendar days after the Grant Date, ClipperData shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that ClipperData complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Licensing Rules prior to assuming his/her duties.

13. **Contingent Compliance Plan.** For purposes of settling the matters set forth herein, ClipperData agrees that it shall, within sixty (60) calendar days after the Grant Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Licensing Rules, ClipperData will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Grant Date, ClipperData shall establish Operating Procedures that all Covered Employees must follow to help ensure ClipperData's compliance with the Licensing Rules. As part of its Operating Procedures, the Compliance Officer shall designate a Covered Employee (or outside counsel or consultant who is knowledgeable in FCC licensing

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<sup>9</sup> See 47 CFR § 1.93(b).

issues) to be responsible for developing and maintaining a database of all FCC Licenses held by ClipperData and the scope of each such License. ClipperData shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Licensing Rules.

- (b) **Compliance Manual.** Within sixty (60) calendar days after the Grant Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure ClipperData's compliance with the Licensing Rules. ClipperData shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. ClipperData shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** ClipperData shall establish and implement a Compliance Training Program on compliance with the Licensing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of ClipperData's obligation to report any noncompliance with the Licensing Rules under paragraph 15 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Grant Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. ClipperData shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Compliance Reports.** In the event that ClipperData implements a Contingent Compliance Program pursuant to paragraph 13, ClipperData shall file compliance reports with the Commission ninety (90) calendar days after the Grant Date, twelve (12) months after the Grant Date, twenty-four (24) months after the Grant Date, and thirty-six (36) months after the Grant Date.

- (a) Each Compliance Report shall include a detailed description of ClipperData's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Licensing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of ClipperData, stating that the Compliance Officer has personal knowledge that ClipperData: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 15 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.<sup>10</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of ClipperData, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each

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<sup>10</sup> 47 CFR § 1.16.

instance of noncompliance; (ii) the steps that ClipperData has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that ClipperData has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

- (d) All Compliance Reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Ricardo Durham at [ricardo.durham@fcc.gov](mailto:ricardo.durham@fcc.gov) and Sean Robinson at [sean.robinson@fcc.gov](mailto:sean.robinson@fcc.gov).

15. **Reporting Noncompliance.** ClipperData shall report any noncompliance with the Licensing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that ClipperData has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the ClipperData has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Ricardo Durham at [ricardo.durham@fcc.gov](mailto:ricardo.durham@fcc.gov) and Sean Robinson at [sean.robinson@fcc.gov](mailto:sean.robinson@fcc.gov).

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date or Grant Date (if the Grant Date occurs within thirty-six (36) months after the Effective Date), whichever is later.

17. **Civil Penalty.** ClipperData will pay a civil penalty to the United States Treasury in the amount of (\$195,000). Such payment shall be made in 3 installments (each an Installment Payment). The first Installment Payment in the amount of \$65,000 is due with 30 days of the Effective Date. Thereafter, subsequent Installment Payments of \$65,000 will be due on the first and second anniversary of the Effective Date. ClipperData acknowledges and agrees that upon execution of this Consent Decree, the civil penalty and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1). Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated.

ClipperData shall send electronic notification of payment to Ricardo Durham at [ricardo.durham@fcc.gov](mailto:ricardo.durham@fcc.gov), Sean Robinson at [sean.robinson@fcc.gov](mailto:sean.robinson@fcc.gov), and Samantha Peoples at [sam.peoples@fcc.gov](mailto:sam.peoples@fcc.gov) on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>11</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure

<sup>11</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

18. **Event of Default.** ClipperData agrees that an Event of Default shall occur upon the failure by ClipperData to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

19. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the civil penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the civil penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by ClipperData.

20. **Waivers.** As of the Effective Date, ClipperData waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. ClipperData shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither ClipperData nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and ClipperData shall waive any statutory right to a trial *de novo*. ClipperData hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>12</sup> relating to the matters addressed in this Consent Decree.

21. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which ClipperData does not expressly consent) that provision will be superseded by such Rule or Order.

24. **Successors and Assigns.** ClipperData agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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<sup>12</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.



26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

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Travis LeBlanc  
Chief  
Enforcement Bureau

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Date

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Sterling Lapinski  
Executive Chairman  
ClipperData LLC

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Date